



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/588,596

06/08/2007

Rene Schenk

10191/4405

4521

26646 7590 12/12/2011  
KENYON & KENYON LLP  
ONE BROADWAY  
NEW YORK, NY 10004

EXAMINER

COYER, RYAN D

ART UNIT

PAPER NUMBER

2197

MAIL DATE

DELIVERY MODE

12/12/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/588,596	<b>Applicant(s)</b> SCHENK ET AL.	
	<b>Examiner</b> RYAN COYER	<b>Art Unit</b> 2197	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 17, 19-22, 24-28 and 30-33 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 17, 19-22, 24-28 and 30-33 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                          |

### **DETAILED ACTION**

This is in response to the RCE for application 10/588596, filed on 6/8/2007. Claims 17, 19-22, 24-28, and 30-33 are pending in the application, of which claims 17, 27, and 32 are in independent form. Claims 1-16, 18, 23, and 29 were previously canceled.

### ***Claim Objections***

Claims 17, 19-22, 24-28, and 30-33 are objected to because of the following informalities: the limitation in the independent claims beginning with "whether a particular resource" recites "for use by the least one functional unit," which Examiner assumes to be typographically erroneous, and which will be examined as if it were amended to recite "for use by the at least one functional unit." Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 2197

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 17-18, 20-21, and 27-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson, USPAT 5,872,977, hereinafter “Thompson,” in view of Karkare et al., USPGPUB 2003/0192036, hereinafter “Karkare.”

Regarding claim 17, Thompson discloses “[a] method for configuring a computer program including at least one functional unit, comprising:

**at least one of: creating at least one implementation-independent configuration data file**, (see, e.g., Thompson, fig. 2-4, col. 2 ln. 58 – col. 3 ln. 10; “. . . building a platform dependent makefile from a platform independent ‘build’ file”) **and altering information filed in the at least one implementation-independent configuration data file**; (see, *id.*, to add information to a file is to alter the set of information contained in that file)

**using a computer script, at least one of automatically setting-up and automatically updating configuration data, stored in a configuration data container, as a function of the information filed in the at least one implementation-independent configuration data file**; (see, e.g., Thompson, fig. 2-4, col. 3 ln. 2-11; “. . . internal data structure . . .”)

**automatically generating at least one item of dependency information** (see, e.g., Thompson, fig. 2-4, col. 4 ln. 40-44; col. 5 ln. 36; col. 7 ln. 23-24; “. . . dependency engine . . .”)

**automatically generating at least one implementation-dependent configuration data file as a function of the configuration data stored in the configuration data container, and as a function of the at least one item of dependency information;** (see, e.g., Thompson, fig. 2-4; col. 2 ln. 58 – col. 3 ln. 10; “. . . building a platform dependent makefile from a platform independent ‘build’ file”; “. . . form the platform dependent makefiles . . .”; the makefiles are formed based at least in part on dependency information evaluated by the dependency engine) **and**

**automatically configuring the at least one functional unit as a function of information filed in the at least one implementation-dependent configuration data file, wherein each of the automated steps above are performed at a processor of a computer.”** (see, e.g., Thompson, col. 2 ln. 46-48; “. . . form the executable program . . .”).

Thompson does not appear to explicitly disclose the following further limitation **“automatically generating at least one item of dependency information describing at least one of: whether a particular resource is reserved exclusively for use by the at least one functional unit, which comprises a software module in the computer program; and a sequence in which additional computer scripts, which alter the configuration data stored in the configuration data container, must be executed”**

More specifically, while Thompson does disclose automatically generating dependency information, (see, e.g., Thompson, fig. 2-4, col. 4 ln. 40-44; col. 5 ln. 36; col. 7 ln. 23-24; “. . . dependency engine . . .”), Thompson does not disclose that the

Art Unit: 2197

dependency information describes the exclusivity of a resource used by one or more software applications (i.e., at least one functional unit). However, Karkare discloses at para. 52 that a database resource “can be located on a separate server reserved exclusively for the database” and that “[t]he configuration of the database is largely dependent on the software applications using the database.”

Thompson and Kakare are both directed toward software engineering and therefore are analogous art. At the time of the invention, one of ordinary skill in the art would have considered the resource exclusivity teachings of Kakare to be an obvious addition to the multi-platform compilation method of Thompson. Moreover, one of ordinary skill in the art would have recognized that a clear and predictable benefit of combining Kakare and Thompson in the foregoing manner is the ability to define resource exclusivity on a platform-specific basis, thereby facilitating Thompson's multi-platform compilation method. Accordingly, the instant claim is unpatentable over Thompson in view of Kakare.

Regarding claim 19, Thompson, in view of Kakare, obviates “[t]he method as recited in Claim 17,” but does not explicitly disclose the limitations “**further comprising: creating a plurality of implementation-independent configuration data files; and assigning each of the implementation-independent configuration data files to at least one functional unit.**” However, Applicants have acquiesced to the assertion made in the previous office action to the effect that the subject matter described in the instant claim was well known at the time of the invention. (See Remarks filed 4/1/2011, pg. 10, first full paragraph). Furthermore, one of ordinary skill in

Art Unit: 2197

the art would have found it obvious to combine with Thompson the act of creating multiple platform-independent makefiles, each corresponding to a different functional unit (i.e., program) as claimed. A source of motivation would have been the ability to practice the invention on more than one source program. Accordingly, the instant claim is unpatentable over Thompson in view of Kakare.

Regarding claim 20, Thompson, in view of Kakare, obviates “[t]he method as recited in Claim 17, further comprising: generating a plurality of implementation-dependent configuration data files, and assigning each of the implementation-dependent configuration data files to the at least one functional unit.” (see, e.g., Thompson, col. 4 ln. 20-30; “. . . plurality of platform specific makefiles . . .”).

Regarding claim 21, Thompson, in view of Kakare, obviates “[t]he method as recited in Claim 20, wherein the at least one implementation-dependent configuration data file is generated as a function of at least one property of hardware on which an installation of at least a portion of the configured computer program is to be made possible.” (see, e.g., Thompson, col. 4 ln. 29-30; “. . . the invention is configured to include platform specific information for which it is used . . .”).

Regarding claim 26, Thompson anticipates “[t]he method as recited in Claim 17,” but does not explicitly disclose the limitations “further comprising: automatically determining, as a function of the configuration data, whether a functional unit included by the computer program is needed by the computer program, wherein the functional unit is only configured if the functional unit is needed by the computer program.” However, Applicants have acquiesced to the assertion made in

Art Unit: 2197

the previous office action to the effect that the subject matter described in the instant claim was well known at the time of the invention. (See Remarks filed 4/1/2011, pg. 10, first full paragraph). Furthermore, one of ordinary skill in the art would have found it obvious to combine with Thompson the operation of referencing in a makefile and compiling only necessary elements of a software application. A clear source of motivation for so doing would have been the realization of smaller code size and faster compilation times. Accordingly, the instant claim is unpatentable over Thompson in view of Kakare.

Regarding claims 27-28, the scope of the instant claims does not differ substantially from that of claim 17. The instant claims are a media analog of method claim 17. Accordingly, the rejection of claim 17 applies, *mutatis mutandis*, to claims 27-28.

Regarding claim 30, Thompson, in view of Kakare, obviates “[t]he storage medium as recited in Claim 27, wherein the storage medium is stored in one of a random access memory, a read-only memory, and a flash memory.” (See, e.g., Thompson, fig. 1).

Regarding claim 31, Thompson, in view of Kakare, obviates “[t]he storage medium as recited in Claim 27, wherein the storage medium is stored on one of a digital versatile disk, a compact disk, and a hard disk.” (See, e.g., Thompson, fig. 1).

Regarding claim 32, the scope of the instant claim does not differ substantially from that of claim 17. The instant claim is a “computing element” analog of method



claim 17. Accordingly, the rejection of claim 17 applies, *mutatis mutandis*, to claim 32.

Regarding claim 33, Thompson, in view of Kakare, obviates “[t]he computing element as recited in Claim 32, wherein the computing element corresponds to a control device.” (See, e.g., Thompson, col. 2 ln. 59-64; “multiple types of computer platforms”; a computer platform is an equivalent of a control device).

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson and Kakare in view of Bollhoefer et al., USPAT 7,234,135, hereinafter “Bollhoefer.”

Regarding claim 22, Thompson, in view of Kakare, obviates “[t]he method as recited in Claim 20,” but does not explicitly disclose the limitation “**wherein the at least one implementation-dependent configuration data file is generated as a function of a result of a plausibility check in which it is determined: whether the hardware is capable of providing data required by the at least one functional unit; and whether a resource required by the at least one functional unit is available.**”

However, Bollhoefer discloses the use of a plausibility check as claimed. (See, e.g., Bullhoefer, col. 4 ln. 19-40).

Bollhoefer, Kakare, and Thompson are directed toward the field of software engineering and therefore are analogous art. At the time of the invention, one of ordinary skill in the art would have found it obvious to combine with Thompson and Kakare the performance of perform a plausibility check prior to creating a makefile for compiling a program for a given platform. A clear benefit of so doing would have been

Art Unit: 2197

the ability to avoid compiling programs for platforms with which the programs would be incompatible or on which the programs would not run successfully. Accordingly, the instant claim is unpatentable over Thompson and Kakare in view of Bollhoefer.

Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson and Kakare in view of Pramberger, USPGPUB 2002/0040469, hereinafter "Pramberger."

Regarding claims 24-25, Thompson, in view of Kakare, obviates "[t]he method as recited in Claim 20," but does not explicitly disclose the limitations **"further comprising: automatically creating a documentation that describes the information filed within at least one of the at least one implementation-independent configuration data file and the at least one implementation-dependent configuration data file"** and wherein **"implementation-independent configuration data file is created in an XML-based format."** However, Pramberger discloses the subject matter of the instant claims in paragraph 16 ("Further, XSCML based definitions may be processed to create an environment documentation to be printed or accessible via the Web. This leads to environment definitions which, on the one side, describe the technical constructs needed for running the software configuration environment system, but also provide a self documenting approach of the same. To enhance the documentation capabilities, additional XML tags may be allowed similar to the HTML (hypertext markup language) tags to intersect the technical text to

Art Unit: 2197

provide the commentary of the technical elements, on one side, but also allow to create user and administration documentation, on the other side, from the same source.”)

Pramberger, Kakare, and Thompson are directed toward the field of software engineering and therefore are analogous art. At the time of the invention, one of ordinary skill in the art would have deemed it obvious to combine the documentation and XML formatting teachings of Pramberger with the multi-platform compilation method of Thompson and Kakare. XML is a very common format, the use of which would render documentation readable to most users. Moreover, documentation in general is very useful for describing, *inter alia*, the software components included in a compilation operation. Accordingly, the instant claims are obviated by Thompson and Kakare in view of Pramberger.

### ***Response to Arguments***

Applicant's arguments in traversal of the standing claim rejections are rendered moot by the foregoing new grounds of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN D. COYER, whose telephone number is (571) 270-5306, and whose fax number is (571) 270-6306. The examiner normally may be reached via phone on Mon-Thurs, 9a-8p. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Li B. Zhen, can be reached on

Art Unit: 2197

(571) 272-3768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ryan D. Coyer/  
Examiner, Art Unit 2197

/Li B. Zhen/  
Supervisory Patent Examiner, Art Unit 2197